IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2908 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MUKESH RAMANLAL DESAI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 2908 of 2002

HL PATEL ADVOCATES for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/05/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 12-1-2002 passed by the District Magistrate, Bharuch by which he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to

indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner, Mr.Vijay Patel for H.L.Patel Advocates at length and learned AGP, Mr.S.J.Dave, for the respondents. I have also perused the material on record. Though several contentions were raised in the petition, learned advocate for the petitioner has restricted his arguments on the point of delay in passing the detention order. He has stated that impugned order has been passed relying upon solitary offence registered against the detenu before Vagra Police station being I.C.R.no.43 of 2001 dated 30-10-2001 under the provisions of Secs.285, 336, 379, 511, 120-B, 304, 381, 337, 447, 438, 34, 35, 37, 111, 113, 119 of Indian Penal Code, Sec.3(1)(2), 4 and 13 of the Damages to Public Property Act and also under Sec.15(2) of the Indian Petroleum Pipeline Act while the order of detention was passed on 12-1-2002 relying upon this offence and hence, there is a delay of about two and half months in passing the order. Learned AGP has fairly admitted the same. Mr.Patel has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

He has further stated that a co-accused has been released by this Court while passing judgment dated 8-5-2002 in Special Civil Application No.2882 of 2002, petitioner may also be released on the ground of parity.

4. It appears that offence registered against the petitioner was on 30-10-2001 and order of detention was passed on 12-1-2002 relying upon this offence and hence, there is a delay in passing the order. No affidavit has been filed either by the detaining authority or the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points. Since a co-accused has been released by this Court vide judgment dated 8-5-2002, petitioner is entitled to be released on the ground of parity.

5. The petition is allowed. The impugned order of detention dated 12-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Mukesh Ramanlal Desai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

6. Before concluding the matter, I would like to mention the following facts which have been emerged during the course of the arguments advanced by the learned counsel for the respective parties and more particularly from the file which has been shown to me by the learned AGP wherein it is revealed that practically all the accused have been released on bail either by the learned Chief Judicial Magistrate or other Judges who were in charge of the matter. It reflects from the FIR and the order that the offence in question is of serious nature and it is against the nation and during the course of incident, three persons have lost their lives and nation has to suffer huge revenue loss running into crores including the loss of foreign currencies. Even experts were also called for to extinguish fire which has been caused due to the alleged act of the above referred accused from the ONGC pipelines which are passing through Vaghra Taluka and more particularly well No.345. After going through the bail order which has been shown to me by the learned AGP, it shows that the learned Judicial Magistrate has mentioned only four sections by stating that all the aforesaid sections are bailable. As such, facts are otherwise. It is revealed from the FIR that

present petitioner and others were facing the offences punishable under the provisions of Secs.285, 336, 379, 511, 120-B, 304, 381, 337, 447, 438, 34, 35, 37, 111, 113, 119 of Indian Penal Code, Sec.3(1)(2), 4 and 13 of the Damages to Public Property Act and also under Sec.15(2) of the Indian Petroleum Pipeline Act. Some sections were also added by way of application dated 1-11-2001.

7. If all concerned would have taken reasonable care in the matter, aforesaid order would not have been passed by the concerned Judge as he has no jurisdiction. It appears from some of the application for bail and order passed on it which have been shown to me by learned AGP that accused has filed bail application before the Judge and as learned Public Prosecutor has made endorsement as "strongly objected", same was kept for hearing and on the very next day, same petitioner accused has filed second bail application through same advocate without disclosing the filing of first application and pending for hearing in the Court. He has suppressed the fact of filing of first application for bail and obtained bail in second application. Not only that, in such a serious matter, even P.P. has also not taken care in reporting the said fact to their superior officers or to Legal Department to carry the matter further. Instead of doing so, all have remained silent including the Investigating Officer as well as the District Magistrate.

8. Officers from various departments are present in the Court. It is informed by the officer from Legal Department that they have not received any opinion from the Public Prosecutor to carry the matter further. Facts remain that there are cases wherein P.P. is not sending any opinion and Legal Department did not find out any special mechanism to verify the things when matter is required to be carried further in cases where P.P. has not sent any opinion and hence, such type of matter used to remain there itself without taking further course of action. In such circumstances, Legal Department should find out some mechanism who can control over the above aspect. If random checking is done, some way can be found out so that in future this type of situation would not be repeated and public at large may not be suffered because of the inaction of the concerned persons. Under the circumstances, copy of this order be sent to Legal Department as well as D.G. of Police, State of Gujarat, to enquire into the matter and if anybody is found guilty, to take necessary step according to law. Copy be also sent to District & Sessions Judge, Bharuch and he is directed to enquire into the matter and prepare a report

stating as to whether during the pendency of first bail application, second bail application has been preferred suppressing the filing of first bail application by the same advocate and if so, he should sent his opinion directly to the Bar Council of Gujarat.

(R.P.DHOLAKIA,J.)

radhan/